

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6013 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 - No
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GUJARAT GUARDINA LTD

Versus

UNION OF INDIA

Appearance:

MR PARESH M DAVE for Petitioners
Mr.H.M.Mehta, Sr.Standing Counsel with MR KETAN A DAVE
for Respondents

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE Y.B.BHATT

Date of decision: 23/09/96

ORAL JUDGEMENT (per Soni J.)

Rule. Learned Advocate Mr.Ketan Dave waives service of Rule for the respondents.

Heard learned Advocate for the petitioner and

Senior Standing Counsel Mr.H.M.Mehta for the respondents.

Petitioner has filed this petition for issuance of writ of certiorari or any other appropriate writ, order or direction to quash and set aside the letter dated 10.5.96 (Annexure D) issued by the respondent no.3. By the said letter, petitioner is asked to pay Central excise duty on packing cost/charges recovered from the customers and not included in the assessable value as per Annexure enclosed therewith showing packing costs and central excise duty payable thereon as per Order in Original No.8/PL/95 dated 15.6.95 passed by the Assistant Commissioner of Central Excise, Ankleshwar. Along with that letter, assessed RT 12 Returns for the months of December 1994 to January 1996 were also enclosed. According to the petitioners, they are not liable to pay any excise duty on transport charges and insurance charges. When they made out the case, the petitioners were told to pay whatever is due according to them. As there is no specific order to pay, according to the petitioners they cannot prefer an appeal. They have, therefore, filed this petition to quash the said order and for a direction to pass a specific order as to the liability.

Learned Senior Standing Counsel Mr.Mehta contends before the court that there is no necessity for passing any such direction, as by letter dated 2.7.96, Department has already informed the petitioners that petitioners are duly assessed by Central excise authority and they are provided with all RT 12 returns from December 1994 to January 1996, as per the direction of Gujarat High Court dated 2.4.96.

Petitioner had filed an appeal against this very order of assessment of 15.6.95 being Order in Original no.8/PL/95. In the said Appeal, Assistant Commissioner, Central Excise and Customs Division, Ankleshwar has held that deductions of the cost of secondary packing i.e.cost of thermocol, pasted mill board, insulation board, wooden cases and steel stripping from the same price would not be admissible to arrive at the assessable value. However, the case of the petitioners that transport charges and insurance charges also could not be added for assessment was not considered at all. In view of this fact, when Department has told the petitioners to assess whatever is due according to them and pay, may not amount to an order of assessment and petitioners contend that a specific order should have been passed. As the order at Annexure D does not speak anything specifically, it will be in the interest of justice to direct respondent no.3

to pass a specific order, quantifying the amount due according to the Department as to transport charges and insurance amount paid.

In view of the above discussion, respondent no.3 is directed to finalise the assessment of clearance made by the petitioner-company, in particular relating to transport charges and insurance charges after giving them personal hearing and in accordance with law, as expeditiously as he can. The petition is, therefore, allowed. Rule is made absolute accordingly with no order as to costs.
